

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ADJUSTACAM LLC

v.

AMAZON.COM, INC.; ET AL.

NO. 6:10-cv-329-LED

JURY

UNOPPOSED MOTION TO DISMISS SAKAR AND KOHL'S

Plaintiff AdjustaCam LLC respectfully submits this unopposed motion to dismiss the claims and counterclaims involving Defendants/Counter-claimants Sakar International, Inc., Kohl's Illinois, Inc., Kohl's Corporation, Inc. and Kohl's Department Stores, Inc. (collectively "Sakar/Kohl's"), pursuant to Fed.R.Civ.P. 41(a)(2) as follows:

I.

This is a patent infringement case involving asserted claims 1, 7 and 19 (the "Asserted Claims") of U.S. Patent No. 5,855,343 (the "'343 patent"). On August 30, 2012, at the culmination of reexamination proceedings involving the '343 patent, the U.S.P.T.O. issued a Final Office Action rejecting the Asserted Claims for being unpatentable over prior art but allowing additional new and amended claims. Ex. 1. On September 20, 2012, in response to that Final Office Action, Plaintiff canceled the Asserted Claims of the '343 patent, Ex. 2, so that a certificate of reexamination can issue concerning the multiple new and amended claims deemed allowable.

Moreover, on September 30, 2012, Plaintiff granted Sakar/Kohl's a covenant not to sue under the '343 Patent (Dkt. No. 721, Ex. 2). Due to disputes over the wording of the covenant, Plaintiff provided an amended covenant not to sue on October 12, 2012 (Dkt No. 729, Ex. A), and a second amended covenant not to sue on this date. The second amended covenant not to sue was mutually agreeable to Plaintiff and Sakar/Kohl's.

In view of the foregoing, the following issues in this case are now moot or near moot: (1) infringement of the Asserted Claims; (2) validity of the Asserted Claims; and (3) damages from infringement of the Asserted Claims. Accordingly, Plaintiff hereby moves for an order dismissing its claims against Sakar/Kohl's **with prejudice**. In addition, Sakar/Kohl's does not oppose, and Plaintiff hereby moves for, an order dismissing Sakar/Kohl's counterclaims **without prejudice**.

II.

Sakar/Kohl's does not oppose dismissal of AdjustaCam's claims and Sakar/Kohl's counterclaims as set forth herein, with the exception of Sakar/Kohl's right to seek to obtain and recover costs and/or attorneys' fees pursuant to Fed.R.Civ.P. 54(d)(1) and/or (2) and 35 U.S.C. § 285 (which AdjustaCam would oppose if sought).

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests the foregoing relief.

December 14, 2012

Respectfully submitted,

By: /s/ John J. Edmonds
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ATTORNEYS FOR PLAINTIFF
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CERTIFICATE OF CONFERENCE

I hereby certify that counsel for Plaintiff have conferred with counsel for Sakar/Kohl's in accordance with L.R. CV-7, and that Sakar/Kohl's does not oppose this motion.

December 14, 2012

/s/ John J. Edmonds

John J. Edmonds

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3).

December 14, 2012

/s/ John J. Edmonds

John J. Edmonds